Petition

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81-479

In the Supreme Court of the United States

October Term, 1981

KEVIN CORY GREAVES,
Petitioner

vs:

STATE OF OREGON,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS
OF THE STATE OF OREGON

KEVIN CORY GREAVES
Attorney for Petitioner
2300 Tablerock Road, No. A
Medford, Oregon 97501
(503) 773-5382

QUESTION PRESENTED FOR REVIEW

Petitioner presents to this Court only one question raised in the lower courts: Whether Petitioner may be deprived of his liberty and sentenced to serve ninety days in jail when he has not had the assistance of counsel at trial.

TABLE OF CONTENTS

Page

Citations to Opinions Below 2

Jurisdiction 2

Question Presented for Review 2

Statement of the Case 2

Reason for Granting the Writ 3

Conclusion 4

APPENDIX

Judgment and Mandate of Oregon Supreme Court 5

Decision of Oregon Court of Appeals 6

Order of Oregon Supreme Court 7

TABLE OF AUTHORITIES

ARGERSINGER vs. HAMLIN
407 US 25, 32 L Ed 2d 530, 92 S Ct 2006 3

GIDEON vs. WAINWRIGHT
372 US 335, 9 L Ed 2d 799, 83 S Ct 792,
93 ALR2d 733 3

IN RE OLIVER
33 US 273, 92, L Ed 694 4

STEVENSON vs. HOLGMAN
254 Or 94, 458 P2d 414 4

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1981

No. _____

KEVIN CORY GREAVES,
Petitioner,

vs:

STATE OF OREGON,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

TO THE COURT OF APPEALS
OF THE STATE OF OREGON

Petitioner respectfully prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of the State of Oregon entered on May 19, 1981, affirming judgment entered against Petitioner in the District Court of Jackson County, Oregon, on September 4, 1980, and affirmed by the Court of Appeals of the State of Oregon on February 23, 1981, with the Oregon Supreme Court denying petition for review.

CITATIONS TO OPINIONS BELOW

The decision of the Court of Appeals for Oregon is reported at 50 Or App 615. Neither the Court of Appeals nor the Oregon Supreme Court rendered opinions as to any of Petitioner's designations of error.

JURISDICTION

The jurisdiction of this Court is invoked under Amendments Six and Fourteen of the Constitution of the United States.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

> In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense – Sixth Amendment to the U.S. Constitution.
>
> All persons born or naturalized in the United States . . . are citizens of the United States and of the State wherein they reside. No State shall deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. – Fourteenth Amendment to the U.S. Constitution.

STATEMENT OF THE CASE

This is a prosecution by the Respondent for the offenses of driving under the influence of intoxicants and failure to perform the duties of a driver involved in an accident. At trial on September 4, 1980, Petitioner was not represented by

counsel of his choice or any counsel or attorney at all, and was found guilty of both charges and sentenced to serve ninety days in jail. Petitioner has not yet served the ninety days, being free pending appeal.

Petitioner appealed to the Court of Appeals of Oregon, who affirmed the lower-court conviction, and the Oregon Supreme Court denied review.

REASONS FOR GRANTING THE WRIT

Petitioner is relying on ARGERSINGER vs. HAMLIN, 407 US 25, 32 L Ed 2d 530, 92 S Ct 2006, wherein the Court ruled that the U.S. Constitution is violated by denying the right to counsel at a state criminal trial when the defendant is sentenced to serve ninety days in jail, and that absent a knowing and intelligent waiver, no person may be imprisoned for any offense unless he was represented by counsel at his trial. See also LENNOX INDUSTRIES, INC., vs. N.L.R.B. 637 F2d 340, 1981; BECKHAM vs. WAINWRIGHT, 639 F2d 262, 1981; DAVIS vs. PAGE, 640 F2d 599, 1981; BALDASAR vs. STATE OF ILLINOIS, 446 US 222, 64 L Ed 2d 169, 100 S Ct 1585, 1980; CUYLER vs. SULLIVAN, 446 US 335, 64 L Ed 2d 333, 100 S Ct 1708, 1980; U.S. vs. McFADDEN, 630 F2d 963, 1980; U.S. vs. CONWAY, 632 F2d 641, 1980; ROSS vs. HEYNE, 638 F2d 979, 1980; DAVIS vs. BOLGER, 496 F Supp 559, 1980.

The Court in ARGERSINGER quoted GIDEON vs. WAINWRIGHT, 372 US 335, 9 L Ed 2d 799, 83 S Ct 792, 93 ALR2d 733:

> . . . The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trails in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trails before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.

> . . . A person's right to reasonable notice of a charge against him, and an opportunity to be heard in his defense—a right to his day in court—are basic in our system of jurisprudence; and these rights include, as a minimum, a right to examine the witnesses against him, to offer testimony, *and to be represented by counsel.* IN RE OLIVER, 33 US at 273, 92 L Ed at 694 (emphasis theirs).

The Court went on to say that it was the view of the *Oregon* Supreme Court that absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial. STEVENSON vs. HOLGMAN, 254 Ore 94, 458 P2d 414. Petitioner submits that if he had had counsel at his trial and to help him with his briefs, he would have applied the ARGERSINGER and STEVENSON cases long before this and probably would have prevailed if not at trail, then at least on appeal in Oregon.

CONCLUSION

Petitioner submits that his conviction is invalid for the purpose of depriving him of his liberty because he was not represented by any counsel or attorney at trial, and for this reason this Petition for Writ of Certiorari should be granted.

Respectively submitted,

_____

Kevin Cory Greaves

APPENDIX

STATE OF OREGON
COURT OF APPEALS

STATE OF OREGON, Respondent,	)	JUDGMENT and MANDATE
	)	Appeal from JACKSON County
v.	)	District Court
KEVIN CORY GREAVES, Appellant.	)	No. 80-2417-C; 80-2418-C
	)	CA 18800

This cause having come on to be heard on appeal and having been duly submitted and considered, and petition for review having been denied by the Supreme Court on April 28, 1981:

IT IS HEREBY ADJUDGED and ORDERED that the decision entered below in this cause is affirmed.

The cause is returned below for entry of judgment pursuant to law and the opinion and order of the court entered February 23, 1981.

IT IS FURTHER ORDERED that respondent recover from appellant costs and disbursements in this court taxed at $90.

ISSUED at Salem, Oregon: May 19, 1981

STATE OF OREGON,)
County of Marion.)

I, ELIZABETH D. BELSHAW, State Court Administrator for the State of Oregon, do certify that this copy of ORDER is a correct transcript of the original, which is on file in my office.

IN TESTIMONY WHEREOF, I have affixed the seal of the Court at Salem, Oregon, this _____.

ELIZABETH D. BELSHAW
State Court Administrator

by _____
Deputy Administrator

IN THE COURT OF APPEALS
OF THE STATE OF OREGON

Case Name:

State of Oregon

(Respondent,)

v.

Kevin Cory Greaves,

(Appellant.)

18800 (CA No.) _____ (Circuit Court No.) Nos. 80-2417-C; 80-2418-C (District Court No.)

County Jackson Judge Lavaughn Merryman

_____ (Agency No.) Judicial Review from _____

Date argued _____ Date submitted on briefs 2/3/81

Before Buttler, Presiding Judge, and Warden and Warren, Judges.

Kevin Cory Greaves, Medford, (Name) Appellant (Attorney pro se)

John R. McCulloch, Jr., (Name) Respondent. (Attorney for)

Date affirmed from the bench and date filed _____

Date affirmed without opinion (ORS 19.180)

and date filed February 23, 1981

SUPREME COURT COURT of APPEALS

[illegible] D. HICKS
State Court Administrator
378-6046

ADMINISTRATIVE OFFICE
SUPREME COURT BLDG.
SALEM, OREGON 97310

Telephone Area Code — 503

Re Cases on Appeal 378-6035
Legal Counsel 378-6022
Oreg. Reports Editor 378-2802

April 28, 1981

Kevin Cory Greaves
304 Clark Street
Medford, Oregon 97501

Re: State v. Kevin Cory Greaves
CA 18900 SC 27704

Dear Mr. Greaves:

The Supreme Court today denied appellant's Petition for Review in the above-entitled matter.

This letter constitutes the order of the Supreme Court denying the petition.

Very truly yours,

Marilyn Hartley

Marilyn Hartley
Supreme Court Calendar Clerk

MH/np
cc: Richard David Wasserman

Opposition

Office - Supreme Court, U.S.
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OCT 13 1981
ER L. STEVAS.
CLERK

No. 81-479

In the Supreme Court of the United States

OCTOBER TERM, 1981

KEVIN CORY GREAVES,

Petitioner,

v.

STATE OF OREGON,

Respondent.

On Petition for a Writ of Certiorari
to the Court of Appeals of the State of Oregon

BRIEF FOR RESPONDENT IN OPPOSITION

DAVID FROHNMAYER
Attorney General of Oregon
*WILLIAM F. GARY
Solicitor General
RICHARD DAVID WASSERMAN
Assistant Attorney General
100 State Office Building
Salem, Oregon 97310
Telephone: (503) 378-4402
Counsel for Respondent

*Counsel of Record

QUESTION PRESENTED FOR REVIEW

Respondent State of Oregon rejects petitioner's formulation of the question presented for review, and submits the following in its stead:

Was petitioner, who is not indigent, denied his constitutional right to counsel when he was sentenced to 90 days' imprisonment after a trial during which he was not represented by counsel?

TABLE OF CONTENTS

	Page
Question presented	i
Opinion Below	1
Jurisdiction	1
Statement of the Case	2
Reasons for Denying the Writ	2
Conclusion	5
Appendix	App-1-3

TABLE OF AUTHORITIES

Cases Cited

Page

Argersinger v. Hamlin, 407 U.S. 25 (1972) 2, 4

Gideon v. Wainwright, 372 U.S. 335 (1963) 3, 4

Statutes

28 U.S.C. § 1257(3) 1

28 U.S.C. § 2101(d) 1

Or. Rev. Stat. § 135.050(1) 4

Other Authorities

Rule 20, Rules of the Supreme Court of the United States 1

Rule 20.1, Rules of the Supreme Court of the United States 1

Rule 20.3, Rules of the Supreme Court of the United States 2

OPINIONS BELOW

A notation that the Oregon Court of Appeals affirmed petitioner's conviction without a written opinion appears at 50 Or. App. 615, 625 P. 2d 1390 (1981). A notation that the Oregon Supreme Court denied a petition for discretionary review of the action of the Court of Appeals appears at 290 Or. 853 (1981). The Supreme Court's action is not reported unofficially in the National Reporter System.

JURISDICTION

Respondent rejects petitioner's statement of the source of this Court's jurisdiction to review the state court judgment herein. This Court has jurisdiction to review the state court judgment by writ of certiorari pursuant to 28 U.S.C. § 1257(3).

Under 28 U.S.C. § 2101(d) and Rule 20, Rules of the Supreme Court of the United States, however, the Petition for Writ of Certiorari was not filed in a timely fashion. 28 U.S.C. § 2101(d) provides:

> "The time for appeal or application for a writ of certiorari to review the judgment of a State court in a criminal case shall be as prescribed by Rules of the Supreme Court."

Rule 20.1 of the Rules of this Court provides:

> "A petition for writ of certiorari to review the judgment in a criminal case of a state court of last resort or of a federal court of appeals shall be deemed in time when it is filed with the Clerk

> within 60 days after the entry of such judgment. A Justice of this Court, for good cause shown, may extend the time for applying for a writ of certiorari in such cases for a period not exceeding 30 days."

In the present case, the Oregon Supreme Court entered its judgment May 19, as shown in the Appendix to the Petition for Writ of Certiorari. That Petition was filed in this Court on September 9, 1981, over 90 days from the entry of judgment in the state court. Pursuant to Rule 20.3 of the Rules of this Court, this Court should decline to entertain the Petition.

STATEMENT OF THE CASE

Respondent rejects petitioner's statement of the case as incomplete, and supplements that statement as follows:

In denying petitioner's request for a transcript of the trial at public expense, the trial court expressly found that petitioner was not indigent, but rather had retained an attorney whom he discharged because of a disagreement over conducting the defense. (App-1).

REASONS FOR DENYING THE WRIT

Petitioner, arguing that he was denied his constitutional right to counsel, relies upon *Argersinger v. Hamlin,* 407 U.S. 25 (1972). That reliance is misplaced. In *Argersinger v. Hamlin,* this Court held that "absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified

as petty, misdemeanor, or felony, unless he was represented by counsel at his trial." 407 U.S. at 37. The petitioner in that case, however, was indigent. The Court there quoted at length from *Gideon v. Wainwright,* 372 U.S. 335 (1963), which emphasized the criminal defendant's indigency:

> "[I]n our adversary system of criminal justice, any person haled into court, *who is too poor to hire a lawyer,* cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. Governments, both state and federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants charged with crime, few indeed, who fail to hire the best lawyers they can get to prepare and present their defense. That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized *if the poor man* charged with crime has to face his accusers without a lawyer to assist him." 407 U.S. at 31-32, *quoting* from 372 U.S. at 344. (Emphasis added).

Argersinger v. Hamlin and *Gideon v. Wainwright* did not create a constitutional right to appointment of counsel at state expense for nonindigent defendants.

The trial court expressly found that petitioner was not indigent. Petitioner has not suggested that that finding was incorrect.[1] The United States Constitution does not entitle him to appointment of counsel at state expense.

---

[1]The Court also found that petitioner had retained an attorney who he later discharged because of a disagreement "upon defense mechanism." (App-1). We note that petitioner was aware of the right to counsel. *See* Notice of Representation and Order on Arraignment, App-2-3. There is no evidence in the record, however, that petitioner requested court-appointed counsel. Or. Rev. Stat. § 135.050(1) provides:

> (1) Suitable counsel for a defendant shall be appointed by a magistrate if:
>
> (a) The defendant is before a court or magistrate on a matter described in subsection (3) of this section; and
>
> (b) *The defendant requests aid of counsel:* and
>
> (c) The defendant makes a verified financial statement and provides other information in writing under oath showing his lack of financial ability to obtain counsel and provide any other information required by the court that reasonably relates to his inability to obtain counsel; and
>
> (d) It appears to the court that the defendant is without means and is unable to obtain counsel. (Emphasis added)

In the absence of a request by petitioner, the trial court was not required to appoint counsel.

CONCLUSION

For the foregoing reasons, this Court should deny issuance of a writ of certiorari to review petitioner's conviction.

Respectfully submitted,

DAVE FROHNMAYER
Attorney General of Oregon
WILLIAM F. GARY
Solicitor General
RICHARD DAVID WASSERMAN
Assistant Attorney General
Counsel for Respondent

App-1

IN THE DISTRICT COURT OF THE STATE OF OREGON FOR JACKSON COUNTY

STATE OF OREGON, Plaintiff, vs. KEVIN CORY GREAVES Defendant.

ORDER REGARDING TRANSCRIPT AT PUBLIC EXPENSE

Case No. 80-2417-C
Case No. 80-2418-C

Defendant has been convicted herein of Driving Under Influence Intoxicants and Failure to Perform Duties of a Driver Involved in an Accident.

He requests transcripts, etc. at public expense.

There has been no showing that Defendant is indigent. To the contrary, Defendant retained an attorney who he discharged in (the Defendant's word) "being unable to agree upon defense mechanism."

Defendant's motion is denied.

Dated at Medford, Oregon this 12 day of Sept, 1980.

L. A. Herrman, District Judge

ORDER REGARDING TRANSCRIPT AT PUBLIC EXPENSE -1

cc: Kevin C. Greaves

App-2

IN THE DISTRICT COURT OF THE STATE OF OREGON FOR JACKSON COUNTY

STATE OF OREGON,
Plaintiff,
vs.
KEVIN CORY GREAVES,
Defendant.

No. 90- -C

NOTICE OF REPRESENTATION AND ORDER ON ARRAIGNMENT

TO THE DISTRICT COURT:

You are hereby notified that the above named defendant will be represented in the above entitled matter by Joel B. Reeder, attorney.

The defendant waives arraignments and the undersigned has advised the above named defendant of the following rights:

1. The right to remain silent:
2. The right to an attorney:
3. The right to a jury trial.

I have explained to the defendant what he is charged with and he understands the same.

Demand is hereby made upon the Jackson County District Attorney's Office for disclosure of all information required under the discovery statutes ORS 135.805 to 135.873.

The undersigned will disclose to the Jackson County District Attorney's Office all information required under the discovery statutes ORS 135.805 to 135.873, at least ten (10) days prior to entry of plea.

The defendant will post security in the amount of $ 120.00 on or before the 23 day of June, 1980, (not later than ten days after the original cite in date.)

The defendant will appear in the above entitled Court on Monday, June 23, 1980, at the hour of 1:30 P. M. for entry of a plea.

Dated this 14 day of May, 1980.

Attorney for Defendant

ORDER

Based upon the foregoing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

That the defendant appear on Monday, June 23, 1980 at the hour of 1:30 P. M. for entry of plea.

IT IS FURTHER ORDERED that the District Attorney of Jackson County, Oregon, and the attorney for the defendant, mutually disclose all information required under the discovery statutes ORS 135.805 to 135.873 at least ten (10) days prior to the date which this case is continued by this order.

Dated this 21 day of May, 1980.

DISTRICT COURT JUDGE

I hereby certify that I served the foregoing Notice of Representation and Order on Arraignment of the Jackson County District Attorney's Office, Jackson County Courthouse, Medford, Oregon 97501, on the 14 day of May, 1980, by mailing him a true copy thereof.

Attorney for Defendant

JOEL B. GEEDER, P.C.
ATTORNEY AT LAW
[illegible]